

J. Thomas



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tabby Distributors, Inc.
File: B-261789; B-261790; B-261791
Date: July 17, 1995

DECISION

Tabby Distributors, Inc. protests that request for proposals (RFP) Nos. 284-95-0008, 284-95-0009, and 284-95-0010, issued by the Department of Health and Human Services, Indian Health Service, should have been set aside for Indian-owned firms under the Buy Indian Act.

We dismiss the protests, filed on June 23, 1995, as untimely because Tabby's challenge relates to an alleged impropriety in the RFPs that should have been protested before the initial time for submission of proposals on February 10.

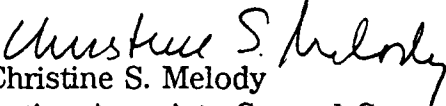
Our Bid Protest Regulations contain strict rules requiring timely submission of protests. These rules specifically require that protests such as Tabby's, based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals, be filed prior to the closing time. 4 C.F.R. § 21.2(a)(1); Engelhard Corp., B-237824, Mar. 23, 1990, 90-1 CPD ¶ 324. These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.-Request for Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129. Since Tabby did not file its protest until June 23, more than 4 months after the initial time for submission of proposals under the RFPs, the protests are untimely.

Tabby bases its challenge on an unspecified policy issued by the agency on February 7, which in Tabby's view, required that the RFPs be set aside for Indian-owned firms. Tabby states that it only recently became aware of this policy, thus apparently explaining why its protests were not filed earlier. The fact that Tabby was unaware of the policy on which it bases its protests did not relieve it of the obligation to timely file its protests. The basis of Tabby's protest is that the failure to set aside the procurements was contrary to the Buy Indian Act. Since it was clear from the solicitations that they were not set aside, Tabby was aware of this basis of protest from the face of the solicitations. The agency policy to which Tabby refers is simply support for Tabby's underlying contention that the failure to set aside was improper. Thus, the fact that Tabby did not learn of the policy until recently does not make the protests timely.

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Moreover, as a general proposition, when an agency takes action an offeror considers adverse to its interests, the offeror must diligently seek information on which to base a protest of the agency's action. See Space-Lok Inc., B-204959.2, Nov. 12, 1982, 82-2 CPD ¶ 436; Bell & Howell Co., B-203235.4, Jan. 5, 1982, 82-1 CPD ¶ 10. There is no indication here that Tabby made any timely effort to seek out support for its contention that the procurements should have been set aside.

The protests are dismissed.


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Acting Associate General Counsel